JOE I. SANCHEZ AND
CELINA V. SANCHEZ ET AL.

IBLA 79-38 Decided August 22, 1979

Appeal from determination by Administrative Law Judge Robert W. Mesch finding lack of good faith in color-of-title applications. NM-18335, NM-18398, and NM-18399.

Affirmed.

1. Administrative Procedures: Hearings -- Rules of Practice: Evidence -- Rules of Practice: Hearings

   Evidence offered on appeal from an initial decision by an Administrative Law Judge after a hearing in a contest may not be considered or relied upon in making a final decision but may only be considered to determine if there should be a further hearing.

2. Administrative Procedure: Burden of Proof -- Color or Claim of Title: Generally

   The burden of establishing a valid color-of-title claim is on the claimant.

3. Color or Claim of Title: Generally -- Color or Claim of Title: Applications -- Color or Claim of Title: Good Faith

   An applicant who believes or has reason to believe that title to land is in the United States at the time when he acquires it does not hold color of title in good faith.

APPEARANCES: Ann Yalman, Esq., Santa Fe, New Mexico, for appellants; Gayle E. Manges, Field Solicitor, Department of the Interior, Santa Fe, New Mexico, for Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

These color-of-title applications were previously before the Board in Joe I. and Celina V. Sanchez, 32 IBLA 228 (1977). The issue for decision was whether appellants 1/ (class I claimants for color of title under 43 CFR 2540.05), were good faith claimants under that regulation. 2/ We determined that there were insufficient facts to warrant the conclusion that appellants believed at the time they acquired the lands applied for that title to such lands was in the United States. We therefore referred the matter to the Hearings Division for a fact-finding hearing pursuant to 43 CFR 4.415. Specifically we stated, at 233:

> The obligation to establish a valid color-of-title claim is on the claimant. 43 U.S.C. § 1068 (1970). Mable Farlow, 30 IBLA 320 (1977). Appellants should have the opportunity to develop their case at a hearing where they will be able to present testimony as well as documentary evidence, and where the BLM may present its own evidence, if it desires. Therefore we order a fact-finding hearing to be held before an Administrative Law Judge pursuant to 43 CFR 4.415. See Sun Studs, Inc., 27 IBLA 278, 294, 83 I.D. 518, 525-526 (1976). The issues at the hearing may include all matters relevant to showing entitlement under the Color of Title Act, including the relation and adequacy of the land descriptions in appellants' chain of title to the land applied for, whether they knew, or had reason to believe, that title to the land was in the United States when they acquired title to their respective claims, the good faith of their predecessors in title and the satisfaction of the requirement that there be improvements on the land or that it have been cultivated.

A hearing was duly held before Judge Mesch on April 21, 1978. On October 26, 1978, he issued Proposed Findings of Fact in which he

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1/ The other appellants, Annabelle Bustos, Casey Sanchez, Danny A. Sanchez, and Randy Sanchez, are the children of Joe I. and Celina V. Sanchez.

2/ A claim of class I is one which has been held in good faith and in peaceful adverse possession by a claimant, his ancestors or grantors, under claim or color of title for more than 20 years, on which valuable improvements have been placed, or on which some part of the land has been reduced to cultivation.

reached the conclusion that appellants were not good faith color-of-title applicants for the lands applied for. The Judge's Findings sets out such additional evidence as became available to him. We will quote hereinafter those portions of the Findings which appellants have challenged on appeal.

The appellants base their claims upon an April 3, 1967, deed executed by Eloy A. Lujan. The first matter discussed by the Judge is whether the lands claimed in the color-of-title applications are the same lands described in the 1967 deed from Lujan to Joe I. and Celina V. Sanchez. The deed describes the lands as follows:

> TRACT 1
>
> A certain portion of land in Section 20 & 21, Township 23 N., R. 10 E.
>
> On the North by U.S. Highway 64
> On the South by B.L.M.
> On the West by Silas Valdes
> On the East by B.L.M.
>
> TRACT 2
>
> A portion of land bounded on the North by Taos Highway, on the East by land formerly of Thomas McQuistin and Public Domain on the South by Small Holding Claims in Sections 28 & 29, on the West by Mrs. J. P. Lujan.
>
> TRACT 3
>
> A portion of land south of Taos Highway (old) measuring 700 yards wide and bounded as follows: on the North by Antonio Roybal, on the East by Tract 2, on the South by Small Holding Claims in Section 29, on the West by Public Domain.

The Judge concluded with respect to this description:

> There is nothing in the evidence from which any conclusions can be drawn that the lands described in the above deed are the same lands that are being claimed under the three color of title applications. The descriptions in the deed are meaningless and no additional information has been supplied that would assist in determining the location of the lands described in the deed . . .

Findings p.6. The Judge was able, however, to make the following findings concerning location of the lands and chain of title:

> . . . [T]he 480 some acres being claimed by the appellants lie north of the town of Dixon, New Mexico. The southern boundary of the land is less than one-half mile from the town of Dixon. The land is included within a Taylor Grazing Act allotment designated as the Dixon Community Allotment. The land has been a part of the grazing allotment since at least 1943.

Findings p.7.

> With certain assumptions that are not unreasonable, a chain of title can be readily traced through the abstracts from the 1967 conveyance to Joe I. and Celina V. Sanchez to (1) a deed dated November 18, 1905, conveying Tract 3, and (2) a deed dated April 8, 1909, conveying Tract 2, a portion of land bounded on the north by the Taos Highway and on the east by land formerly of Thomas McQuistin and public domain. Tract 1, a certain portion of land in Sections 20 and 21, cannot be found in the abstract in any recognizable form prior to the 1967 conveyance to the Sanchezes. A third tract of land, in addition to Tracts 2 and 3, does appear in the abstract prior to the 1967 conveyance. In the April 8, 1909, conveyance it is described in part as "about 12 acres of land according to government Survey." In the next conveyance dated December 30, 1937, it is described as Small Holding Claim No. 1120. This is patented land and not subject to the color of title applications. The next conveyance is the one to the Sanchezes and the tract of land is described as above set forth.
>
> I find that a chain of title can be traced back to a date prior to the 1916 withdrawal as to the lands (wherever they might be) described as Tract 2 and Tract 3 in the 1967 conveyance to the Sanchezes. I find that a chain of title cannot be traced back to a date prior to 1967 as to the land described as Tract 1 in the 1967 conveyance. This latter finding may or may not be significant since no definite conclusion can be reached from the evidence as to whether the appellants are basing their claims on the land described as Tract 1. Presumably, however, they are, inasmuch as most of the land being claimed lies in Section 20 and 21 and the caption of the abstracts of title submitted by the appellants

> describes Tract 1 as being in Sections 20 and 21, and Tracts 2 and 3 as being in Sections 28 and 29.
>
> This presumption raises another problem. The appellants are claiming a solid block of land that lies between the Rio Grande River and/or Highway 64 on the north and Small Holding Claims in Sections 28 and 29 on the south. According to the 1967 conveyance Tract 1 is bordered on the south by BLM or public land. Consequently, Tract 1 cannot abut Tracts 2 and 3 on the south. Again, according to the 1967 conveyance and statements in the appellants' posthearing briefs, the west boundary of Tract 2 is the east boundary of Tract 3 and the two tracts abut public domain on the east and the west. Consequently Tract 1 cannot abut Tract 2 on the east or Tract 3 on the west.

Findings, pp.6-7.

Appellants state in their brief that no issue regarding adequate land descriptions was raised by BLM at the hearing and "therefore appellants did not present extrinsic evidence to establish adequate definite descriptions."

Apparently appellants make this statement in view of the following comment by the Judge at p. 6 of his decision:

> . . . Although specifically invited to do so by the Board of Land Appeals, the Bureau of Land Management has not raised any recognizable issue concerning the relation and adequacy of the land descriptions to the land applied for in the color of title applications. If the issue had been properly and timely raised, the appellants might have presented satisfactory evidence showing that the lands described in the above deed are the same lands that are being claimed under the applications.

We believe the Judge misperceived the import of the Board's decision. It specifically mentioned as an issue the "relation and adequacy of the land descriptions in appellants' chain of title to the land applied for." The burden of addressing this issue and in offering proof to show the land descriptions and their relationship to the land sought was upon the color-of-title claimant. The invitation in the Board's decision was not to BLM, but to appellants who bore this burden. In a fact-finding hearing ordered by this Board, unless the Judge directs otherwise, "the appellant will present his evidence on the facts at issue following which the other parties and the Bureau of Land Management will present their evidence on such issues." 43 CFR 4.434. In

any event, it was not the burden of BLM to attempt to make up deficiencies in the appellants' applications. They were on adequate notice of the issues and, as will be discussed further, infra, they did not take advantage of this opportunity.

Appellants further contend that this issue cannot be decided unless the matter is remanded for a further evidentiary hearing. They argue in the alternative that lack of specific description does not per se defeat their claims. With their brief appellants have submitted new exhibits, not before the Judge, upon which they base amplified descriptions of Tracts 2 and 3. They specifically aver that they do not base their claims on Tract 1, and they agree with the finding, supra, that the west boundary of Tract 2 is the east boundary of Tract 3, and that the two tracts abut public domain on the east and the west.

[1, 2] The exhibits submitted on appeal include an aerial photograph which purports, according to the brief, to depict the "Old Taos Highway" and the "New Taos Highway." Three other exhibits are right-of-way maps whose relevance is unclear. We need not rule on the probative value of these documents. They should have been introduced and made part of the record at the hearing before Judge Mesch. Offered on appeal, they cannot be considered or relied on in making a final decision but may only be considered to determine if there should be a further hearing. David A. Burns, 30 IBLA 359 (1977); see also 43 CFR 4.24. A further hearing is not warranted as it does not appear that additional facts would be developed which could affect the result. To reemphasize, as we stated in our previous decision, supra, concerning these applications, the claimants have the burden of proving a valid color-of-title claim. They have had ample opportunity to do so. See Mable M. Farlow (On Reconsideration After Hearing), 39 IBLA 15 (1979).

The issue dispositive of this appeal concerns appellants' good faith. The Judge made detailed findings on this issue. We will quote these findings and the Judge's conclusions in their entirety, listing at intervals appellants' challenges thereto, and our disposition of those challenges. On page 8 of his Findings, the Judge states:

> By a deed executed on May 15, 1963, and recorded the same day, Joe I. and Celina V. Sanchez obtained title to 3.309 acres of land within two patented Small Holding Claims. The Sanchezes had this land surveyed and platted by a registered land surveyor prior to the conveyance. Following a lengthy meets [metes] and bounds description, the deed states that the property is bounded on the north by U.S. Government land. The north boundary of this property abuts Lot 3 of Section 28 which is being claimed under the color of title application filed by Annabelle

Bustos and Casey Sanchez. This conveyance clearly shows that Mr. Sanchez knew or certainly should have known that (1) the private land he obtained in 1963 abutted public domain on the north and (2) the color of title lands he acquired in 1967 were public lands abutting his private land to the south.

Appellants contend with respect to the May 15, 1963, deed that Joe I. Sanchez could not have known that the land directly north of his 1963 acquisition was Tract 2 because, as the Judge himself observed, the 1967 deed was "insufficient for finding the exact placement of Tract 2."

This argument avoids the salient point which is that Joe I. Sanchez knew in 1963 that the land to the north was public land, however such land may have been described in the 1967 deed.

The Findings continue, pp. 8-10:

> By a document dated February 13, 1965, which was submitted to the Advisory Board for the Dixon Community Grazing Allotment, Joe I. Sanchez and two other signatories stated:
>
> > WE AS INTERESTED PARTIES AND QUALIFIED APPLICANTS FOR GRAZING PERMITS OR LICENSES within the Dixon Community Grazing Allotment for the proper utilization of the grazing lands and the development of water holes, fencing and other construction and the maintenance of improvements wish to organize as corporation "not for profit" . . . .
> >
> > WE FURTHER PETITION THIS ADVISORY BOARD TO TAKE ACTION REGARDING CERTAIN LIVESTOCK FROM other communities grazing within the above named allotment. WE ALSO WISH TO PROTEST THE FENCING ALONG the U.S. 64 above the community of Rinconada which appears on the Official Map dated December 29, 1959 issued by S/ J. W. Young.
>
> This document certainly indicates familiarity on the part of Joe I. Sanchez with the Dixon Community Grazing Allotment and the public lands within the Allotment. It also establishes that as early as 1965 Mr. Sanchez had an official map prepared by the Bureau of Land Management showing the Dixon Community Grazing Allotment.

On March 16, 1966, Joe I. Sanchez and two others wrote to the Bureau of Land Management advising that they had formed a cattle growers association "not for profit" under section 161.14 of the Federal Range Code for the Dixon Community Allotment. Joe I. Sanchez signed the letter as president. Section 161.14 of the Federal Range Code for Grazing Districts provided that local associations could be formed with powers, among other things, to assist in the protection and improvement of the Federal Range and to "act in an advisory capacity in the administration of the Federal Range." It is difficult to believe that Mr. Sanchez as the president of the association and one of the principal parties in its organization was not aware of what lands were Federal Range or public lands within the Dixon Community Allotment. How could the three-member association assist in the protection, improvement and administration of the Federal Range if the members did not know what lands were public lands within the Dixon Community Allotment?

On March 17, 1967, the Bureau of Land Management furnished Joe I. Sanchez with an official allotment map for the Dixon Community Allotment. This map shows beyond any question that the lands applied for in the three color of title applications were public lands included within the Dixon Community Allotment. I do not accept the assertions of Mr. Sanchez that he did not receive the map until after 1970; that when he received it the map was not comprehensible; and that he could not determine what lands were public lands or Federal Range lands within the allotment. This document standing alone is sufficient to establish that Mr. Sanchez knew or certainly should have known (1) what lands were public lands within the grazing allotment and (2) when he acquired color of title to the claimed lands some two weeks later they were public lands within the grazing allotment.

Appellants point out that the December 29, 1959, map was not introduced in evidence and therefore it cannot be known what lands such map depicted. Appellants allege that BLM is itself uncertain which lands are public and which private, and that BLM's maps differ. Therefore, they suggest, Joe I. Sanchez could not be expected to know which lands were public and which private.

These speculative assertions do not successfully overcome the probative evidence as tabulated in the Findings. Joe I. Sanchez' familiarity with the Dixon Community Allotment cannot reasonably be doubted in view of the documents relied on. Nor has it been refuted

that the March 17, 1967, map (Bureau Exhibit 8) clearly shows that the lands of the three color-of-title applications were public lands within the Dixon Community Allotment.

The Findings continue, pp. 10-11:

> The deed conveying the three tracts of land to Joe I. and Celina V. Sanchez that forms the basis for the color of title claims was executed on April 3, 1967. It was recorded on April 19, 1967. The three tracts of land described in the deed were not platted or surveyed by a registered land surveyor as was done with the patented land that the Sanchezes obtained title to in 1963.
>
> By a letter dated January 11, 1969, Joe I. Sanchez and two others wrote to Senator Clinton P. Anderson soliciting help "with some grazing problems in B.L.M. Federal Public Domain lands." The letter mentions "lands historically used by the residents of the Dixon community" and states "[w]e have very limited areas for grazing purposes and with few animals our profits are very marginal." At the time of this letter there were four licensees authorized by the Bureau of Land Management to graze livestock within the Dixon Community Allotment. Mr. Sanchez was one of the licensees. The letter indicates that at that time Joe I. Sanchez was the county clerk for Rio Arriba county. This is the county in which the lands being claimed are situated. All conveyances affecting lands in the county are filed for record in the county clerk's office.
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> In a letter dated April 21, 1969, Joe I. Sanchez advised the Bureau of Land Management in Albuquerque, New Mexico, that:
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> > We have a number of unauthorized livestock on Public Domain lands. We know of several owners whose name [sic] will follow:. . .
> >
> > We are also having difficulty in convincing land owners who have to keep fences in good shape when our cattle are on BLM lands under valid, paid license. It would serve a good purpose if you could schedule a public meeting to explain to the people of Dixon.

> This document, again, clearly establishes knowledge and familiarity with the public lands within the Dixon Community Allotment. How else would Mr. Sanchez know that there were unauthorized livestock on public domain lands and how would he know when his cattle were on BLM lands?

Appellants state that the January 11 and April 21, 1969, letters indicate at most that Joe I. Sanchez knew there were public lands within the Dixon Community Allotment, not that he knew the boundaries of these lands or that the lands referred to are those in the color-of-title applications.

Again, these assertions are without merit. It is reasonable to conclude from the letters that Joe I. Sanchez was intimately familiar with the location and extent of public lands within the allotment. If he had no idea of boundaries he could not have been aware of unauthorized grazing on the public lands.

The remainder of the Findings, pp. 11-14, states as follows:

> By a letter dated September 14, 1972, the New Mexico State Office of the Bureau of Land Management advised Senator Joseph M. Montoya as follows:
>
> > This letter is in reference to your inquiry concerning land which Mr. Joe I. Sanchez claims in Sections 20, 21, 28 and 29; T. 23 N., R. 10 E., NMPM. The status of most of these lands as shown on the BLM master title plat is that of public lands withdrawn for power purposes. A careful review of the conveyances submitted by Mr. Sanchez indicates that he is claiming approximately 400 acres of land most of which is in the above status.
> >
> > . . . However, it is suggested that Mr. Sanchez be advised that he may have a color-of-title claim and that he should file an application complete with the necessary supporting data. Mr. Sanchez should also be informed that it appears that the land area described in the submitted conveyances is in excess of the statutory limitation of 160 acres of a color-of-title patent. Therefore despite the fact that Mr. Sanchez may have a legitimate claim for 400 acres, he will be able to obtain only 160 acres under the provisions of the color-of-title statutes.

The above information was undoubtedly communicated to Mr. Sanchez inasmuch as the appellants attached a copy of the letter to their initial posthearing brief with the explanation that they could not locate the letter for presentation at the hearing. This letter shows that in 1972 Joe I. Sanchez was claiming some 400 acres under the Color of Title Act and he was advised through his representative that he could only claim 160 acres.

On December 5, 1972, deeds were recorded from Joe I. and Celina V. Sanchez to Danny and Randy Sanchez and to Annabelle Bustos and Casey Sanchez covering the lands that are the subject of the two color of title applications filed by the children. The deeds, however, were dated December 15, 1970, and were purportedly acknowledged on that date. The land descriptions in these deeds are somewhat more definite than the descriptions in the 1967 deed to the parents. However, again the specific location of the lands cannot be determined from the descriptions without additional information.

When the two conveyances to the children were filed in the county clerk's office for Rio Arriba County, New Mexico, their mother, Celina V. Sanchez, was the county clerk. At that time she had been the county clerk for some four years and apparently succeeded her husband who used that title in 1969. On the date of the alleged conveyances in 1970, Randy Sanchez would have been 5 years old; Casey Sanchez, 14 years old; Danny Sanchez, 22 years old; and Annabelle Bustos, 24 years old.

It is difficult to believe that the two deeds to the children were actually executed in 1970 but not recorded until 1972. I say this because of (1) the prompt recordation of the 1963 deed conveying private lands bounded on the north by public land; (2) the early recordation of the 1967 deed purportedly conveying the claimed lands to the parents; (3) the September 14, 1972, letter to Senator Montoya advising that only 160 acres of the 400 acres held by Joe I. Sanchez could be claimed under the Color of Title Act; and (4) the fact that Joe I. and Celina V. Sanchez had individually served as county clerks for a period in excess of four years as of December 1972.

The parents' color of title application was filed on March 23, 1973. The children's applications were

filed on March 29, 1973. The parents stated in their application that the basis for their claim to the land was that they "[b]ought property unaware that Patent for this land was never issued" and that they first learned they did not have clear title in July 1972 from the abstract company. The children in their applications stated in substance that they acquired the property and were not aware that it was not patented until an abstract company examined the title records. As with the parents, they stated that they first learned they did not have clear title in July 1972 from the abstract company.

In contrast to the statements in the applications asserting that they were unaware that the land was public land prior to some time in July 1972, the appellants in their opening posthearing brief state:

> In addition, the conveyance from Eloy A. Lujan to Joe I. and Celina Sanchez was made in April of 1967 and the subsequent conveyances to Danny and Randy Sanchez and Annabelle Bustos and Casey Sanchez were made more than three years later (December of 1970). At this time, applications had been apprised of the maximum claim that can be made under the Color of Title Act. The Color of Title applications were made approximately five years after the conveyance to Joe I. and Celina V. Sanchez. (Emphasis added.) (p. 4)

The evidence presented by the appellants at the hearing consisted solely of testimony elicited from Joe I. Sanchez. None of the other appellants testified in their own behalf. For the most part, the testimony of Mr. Sanchez simply reiterated the material set forth in the statement of reasons filed by the appellants with their appeal to the Interior Board of Land Appeals. The appellants' evidence was directed only to the question of whether Joe I. Sanchez had knowledge that the claimed lands were public lands at the time of the 1967 conveyance. They did not present any evidence relating to the question of knowledge on the part of any of the appellants at the time of the conveyances to the children in the 1970's.

In view of the foregoing chain of documentary evidence, I cannot accept the testimony of Joe I. Sanchez that he did not know that the lands being claimed were public lands at the time of the 1967 conveyance. On the basis of the documentary evidence, I find that Joe I. and Celina V. Sanchez

> knew or had reason to believe that title to the land was in the United States when they acquired title to the lands included in the three color of title applications in 1967. And, on the basis of the documentary evidence and the admission in the appellants' posthearing brief noted above, I find that all of the appellants knew that title to the land was in the United States when the children acquired title to the lands included in the two applications in the 1970's.

In connection with the two conveyances to the children, counsel for appellants conjectures that the 2-year delay in recording the deeds may have been due to the fact that "this was an intrafamilial transaction and that the parents were not worried about land transactions between family members and outsiders." With their brief appellants have submitted the affidavits of Delphinia S. Trujillo who, it is asserted, wrote out the descriptions in the deeds on December 15, 1970. Also submitted on appeal are the affidavits of the four children attesting to good faith at the time of the conveyances. Appellants argue finally that the Judge improperly utilized the statement against interest from their posthearing brief.

[3] We find these contentions to be without substance. We do not consider the affidavits submitted on appeal for the reasons stated under [1, 2], supra. The so-called Trujillo affidavits are not sworn to, but only acknowledged. The crucial aspect of this case is that appellants were afforded a full evidentiary hearing, yet only Joe I. Sanchez testified in his own behalf, and his testimony repeated the material in appellants' statement of reasons. Danny and Casey Sanchez, though present at the hearing, gave no testimony. Instead, it was generally agreed at the hearing that their testimony would have repeated that of Joe I. Sanchez. Thus, there is no justification whatever for a further hearing. Oral testimony in an administrative hearing is not a fungible where evidentiary value is ascribed on a quantum basis. It is a product whose probative value depends on such factors as relevance, competency, and credibility. Navajo Tribe of Indians v. State of Utah, 12 IBLA 1, 80 I.D. 441 (1973).

The statement from appellants' posthearing brief was quoted by the Judge to illustrate a "contrast" to the statements made in the Sanchez' color-of-title applications. There is no indication to what extent, if at all, the Judge utilized this statement in reaching his conclusions. Nor would the exclusion of this statement affect the result herein in view of the entire record.

The Judge's conclusions are correct except as indicated above with respect to the quoted statement from page 6 of his decision.

His error does not go to the essence of the appeal. The evidence indicates that the appellants believed or had reason to believe that title to the applied for lands was in the United States at the time they acquired the lands. They therefore did not demonstrate good faith and the applications should properly be rejected. Joe I. and Celina V. Sanchez, supra.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the recommended determinations of Judge Mesch are accepted and the applications are denied.

Frederick Fishman
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Joan B. Thompson
Administrative Judge